

LAW OFFICES OF BING LI, LLC  
Bing Li (BL 5550)  
1350 Broadway, Suite 1001  
New York, NY 10018-0947  
(212) 967-7690  
Attorneys for Defendants  
Star Mark Management, Inc.,  
Great Mark Corporation and  
Jimmy Zhan

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
KOON CHUN HING KEE SOY & SAUCE : 04 Civ. 2293 (JFB) (SMG)  
FACTORY, LTD., a company :  
organized under the laws of :  
Hong Kong, :  
Plaintiff, :  
-against- :  
STAR MARK MANAGEMENT, INC., a :  
New York corporation; GREAT MARK :  
CORPORATION, a New York :  
corporation; JIMMY ZHAN, an :  
individual (a/k/a Yi Q. Zhan); :  
and JOHN DOES 1 through 10, :  
Defendants. :  
-----X

BING LI, an attorney duly admitted to practice before  
this Court, declares under the penalty of perjury as  
follows:

1. I am a member of the LAW OFFICES OF BING LI, LLC,  
attorneys for STAR MARK MANAGEMENT, INC. ("Star Mark"),

GREAT MARK CORPORATION ("Great Mark") and JIMMY ZHAN ("Zhan"), the defendants in the within action (collectively "Defendants").

2. I respectfully submit this declaration in support of Defendants' motion for an order pursuant to the Court's inherent power in supervising discovery and Rule 45 of the Federal Rules of Civil Procedure quashing a subpoena issued by Plaintiff on January 18, 2007 to Jenny Chen (the "subpoena") on the grounds that the subpoena was issued without the Court's authorization after fact discovery has closed and that the information sought by the subpoena is not material or relevant to the issues raised in this action; awarding defendants costs including reasonable attorney's fees incurred in making the instant motion; and granting defendants such other and further relief as the Court deems just and proper.

3. True copies of documents relevant to the instant motion are annexed hereto as follows:

- Ex. A Plaintiff's subpoena issued to Jenny Chen dated 1/17/07;
- Ex. B Plaintiff's Notice of Deposition of Jenny Chen dated 1/18/07;

Ex. C Excerpts from the 9/8/06 Conference transcript;

Ex. D Four emails exchanged by counsel:

- (1) Email of Bing Li ("Li") to Anthony A. Coppola ("Coppola") dated 1/19/07, at 19:53 p.m.;
- (2) Email of Coppola to Li dated 1/23/07, at 11:30 a.m.;
- (3) Email of Li to Coppola dated 1/23/07, at 7:43 p.m.;
- (4) Email of Coppola to Li dated 1/24/07, at 1:06 p.m.

Ex. E Order of Judge Gold dated December 8, 2006 (Docket No. 155).

4. Zhan was deposed in this action on December 21 and 30, 2005.

5. According to Zhan's deposition testimony, Jenny Chen ("Chen"), a non-party to this action, was a shareholder of Star Mark from 2000 until Star Mark stopped doing business at the end of 2005 when Chen withdrew her interest in Star Mark.

6. The information sought by plaintiff's subpoena mainly relates to Chen's "loans made to or received from [Star Mark, Great Mark and Zhan]" (Ex. A, Schedule B, Item 3), "investment made by Ms. Chen in [Star Mark, Great Mark, Great Kingsland, Inc. and Zhan]" (id., Item 4), "payments

made by Chen for goods or other assets belonging to [Star Mark, Great Mark, Great Kingsland, Inc. and Zhan]" (id., Item 5), and Chen's receipts of "money or other assets" from [Star Mark, Great Mark or Zhan]" (id., Item 6).

7. At the conference held on September 8, 2006, the Court announced that discovery in this case "[c]losed, other than the items ... discussed on the record today." Ex. C, Tr. 60:6-17.

8. Defendants rely on the Court's decision, Playboy Enterprises International Inc. v. On Line Entertainment, Inc., 2003 WL 1567120, 00-civ.-6618 (RJD) (E.D.N.Y. March 13, 2003) (Gold, M.J.), for the proposition that a subpoena that was served after close of discovery and without prior application to the Court will be quashed.

9. Defendants also rely on the Court's recent decision ruling on defendants' motion to modify plaintiff's subpoena served on Citibank for Zhan's personal financial records and "Plaintiff's Letter Application regarding Jenny Chen and Corporate Tax Returns. There, the Court held as follows (Ex. E, at 1):

... Although under other circumstances [the Court] might be included to consider the underlying merits of the parties' positions about the propriety of the discovery demands in dispute, the large number of previous discovery applications and conferences convinces [the Court] not to do so, **but instead to base [the Court's] rulings upon prior court orders and the representations of counsel made at prior conferences.** [emphasis added]

10. Plaintiff will argue that discovery with respect to Jenny Chen was not closed because it was one of the "items" that were discussed at the 9/8/06 Conference. However, the issue regarding Jenny Chen that was discussed only relates to defendants' producing the last known address of Chen to plaintiff. Defendants produced the information on November 30, 2006 (prior to the Court's order of December 8, 2006). Therefore, the Jenny Chen discovery issue was closed.

11. Plaintiff cannot argue that the subpoena was authorized by the Court. Instead, it will argue that the Court's inquiry about whether the last known address of Jenny Chen was produced to plaintiff was the Court's authorization. See Ex. D(2) ("At the conference Judge Gold initiated the question 'Have you provide last known address

information for this Mrs. Chen?'").

12. Defendants respectfully submit to the Court that plaintiff's interpretation is not supported by the record and not reasonable. First, had the Court really intended to authorize a pretrial subpoena on Chen, the Court could have so specifically ordered. Second, contrary to plaintiff's contention, the disclosure of Chen's last known address information is not meaningless because it is necessary for plaintiff to serve a trial subpoena (as opposed to a pretrial discovery subpoena).

13. Plaintiff's counsel justified the need for the Chen subpoena as follows (Ex. D(4)):

The disc[overy] with respect to Ms. Chen directly related to Mr. Zhan's testimony that he had a business partner that he bought out and our attempt to find out more information about how that relationship ended and the nature of the transaction relating thereto.

14. However, plaintiff's counsel did not make these statements to the Court at the 9/8/06 Conference and did not even mention that plaintiff would need any pretrial discovery from Jenny Chen. See, Ex. C, Tr. 32-33.

15. Furthermore, the information sought by plaintiff's subpoena (Ex. A, Schedule B) mainly relates to the transfer and ownership of Star Mark's assets (Chen's investment in Star Mark and her withdrawal of her interest therefrom). As such, the discovery sought from Chen is premature as there is no judgment entered in this action.

16. Accordingly, the Court is requested to quash the subpoena and award defendants such other and further relief as the Court deems just and proper.

17. I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Respectfully submitted,

Dated: New York, New York  
January 24, 2007

LAW OFFICES OF BING LI, LLC  
Attorneys for Defendants

By: 

Bing Li (BL 5550)

## **EXHIBIT A**



**Issued by the**  
**UNITED STATES DISTRICT COURT**

EASTERN

DISTRICT OF

NEW YORK

Koon Chun Hing Kee Soy &amp; Sauce Factory, Ltd.

**SUBPOENA IN A CIVIL CASE**

V.

Star Mark Management, Inc., et al

Case Number:<sup>1</sup> 04-2293

TO: JENNY CHEN  
 40-10 149th St (1st fl)  
 Flushing, NY 11355

- ☐ YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME

- ☒ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	ABELMAN, FRAYNE & SCHWAB 666 Third Ave (10th fl), New York, NY 10017	DATE AND TIME 2/12/2007 10:00 am
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- ☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):  
 See Attached Schedule "B"

PLACE	Abelman, Frayne & Schwab 666 Third Ave (10th fl), New York, NY 10017	DATE AND TIME 2/5/2007 9:00 am
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- ☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME
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Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)	DATE
<i>Anthony A. Coppola</i> ATTORNEY FOR PLAINTIFF	1/18/2007
ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER	
Anthony A. Coppola of Abelman, Frayne & Schwab 666 Third Ave, New York, NY 10017	

(See Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), on next page)

<sup>1</sup> If action is pending in district other than district of issuance, state district under case number.

## **SCHEDULE B**

### **Document Requests**

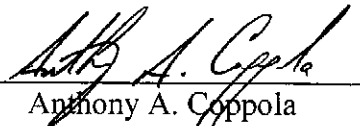
1. All documents identifying Ms. Chen's role as an investor, owner, officer, director employee, consultant, representative or in any other capacity for or on behalf of Star Mark Management, Inc., Great Mark Corporation, Jimmy Zhan, Yi Zhan, Yi Q. Zhan or Y.Q. Zhan from January 2001 through the present.
2. All documents from January 2001 through the present sent to or received from Star Mark Management, Inc., Great Mark Corporation, Jimmy Zhan, Yi Zhan, Yi Q. Zhan or Y.Q. Zhan including but not limited to correspondence, invoices, emails any other records.
3. All documents from January 2001 through the present reflecting or relating to any loans made to or received from Star Mark Management, Inc., Great Mark Corporation, Jimmy Zhan, Yi Zhan, Yi Q. Zhan or Y.Q. Zhan including, but not limited to written agreements, correspondences, bank statements, cancelled checks, and any other relevant documents.
4. All documents relating or referring to investments made by Ms. Chen in Star Mark Management, Inc., Great Mark Corporation or Great Kingsland, Inc. between January 2001 to the present.
5. All documents reflecting, relating or referring to payments made by Ms. Chen for goods or other assets belonging to Star Mark Management, Inc., Great Mark Corporation, Great Kingsland, Inc., Jimmy Zhan, Yi Zhan, Yi Q. Zhan or Y.Q. Zhan between January 2001 to the present.
6. All documents reflecting, relating or referring to money or other assets received by Ms. Chen from Star Mark Management, Inc., Great Mark Corporation or Great Kingsland, Inc., Jimmy Zhan, Yi Zhan, Yi Q. Zhan or Y.Q. Zhan between January 2001 to the present.

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on January 18, 2007, I caused a true and complete copy of the foregoing **SUBPOENA** to Jenny Chen, to be served by facsimile and first class mail delivery upon:

Bing Li, Esq.  
Law Offices of Bing Li  
1350 Broadway (Suite 1001)  
New York, NY 10018-0947

Attorneys for Defendants

  
\_\_\_\_\_  
Anthony A. Coppola

## **EXHIBIT B**

ABELMAN, FRAYNE & SCHWAB  
Lawrence E. Abelman (LA 6486)  
Jeffrey A. Schwab (JS 9592)  
Anthony A. Coppola (AC 3548)  
666 Third Avenue  
10<sup>th</sup> Floor  
New York, New York 10017  
(212) 949-9022

Attorneys for Plaintiff  
Koon Chun Hing Kee Soy & Sauce Factory, Ltd.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

\_\_\_\_\_  
X  
KOON CHUN HING KEE SOY & SAUCE :  
FACTORY, LTD., a company organized :  
under the laws of Hong Kong :

*Plaintiff,*

-against-

STAR MARK MANAGEMENT, INC., a :  
New York corporation; GREAT MARK :  
CORPORATION, a New York corporation; :  
JIMMY ZHAN (a/k/a Yi Q. Zhan) an :  
individual; and JOHN DOES 1 through 10 :

*Defendants.*

04 Civ. 2293 (JG)

**NOTICE OF DEPOSITION  
OF JENNY CHEN**

\_\_\_\_\_  
X  
To: Bing Li, Esq.  
LAW OFFICES OF BING LI  
1350 Broadway, 10<sup>th</sup> Floor  
New York, New York 10018-0947

Attorneys for Defendants

PLEASE TAKE NOTICE that pursuant to Rule 30 of the Federal Rules of Civil Procedure, Plaintiff KOON CHUN HING KEE SOY & SAUCE FACTORY, LTD. ("Koon Chun") will take the deposition upon oral examination of Jenny Chen regarding the categories listed in annexed Schedule A. Ms. Chen is also requested to produce prior to the deposition those documents in her possession or control which are listed in the annexed Schedule B.

The deponent should contact the undersigned before February 5, 2007 and indicate whether an interpreter is required and if so, what specific language is required to be interpreted.

The deposition will commence at 10:00 a.m. on February 12, 2006 at the Offices of Abelman, Frayne & Schwab, 666 Third Avenue, New York, New York 10017.

The deposition will continue as permitted by the Federal Rules of Civil Procedure.

The examination will be conducted before a notary public or other officer authorized to administer oaths and will be recorded stenographically.

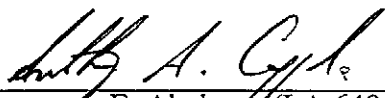
You are invited to attend and cross examine.

Dated: January 18, 2007

Respectfully submitted,

ABELMAN, FRAYNE & SCHWAB

By:

  
Lawrence E. Abelman (LA 6486)  
Jeffrey A. Schwab (JS 9592)  
Anthony A. Coppola (AC 3548)  
666 Third Avenue  
10th Floor  
New York, New York 10017  
(212) 949-9022

Counsel for the Plaintiff

## **SCHEDULE A**

### **Deposition Categories**

1. Ms. Chen's role as an investor, owner, officer, director employee, consultant, representative or in any other capacity for or on behalf of Star Mark Management, Inc., Great Mark Corporation, Jimmy Zhan, Yi Zhan, Yi Q. Zhan or Y.Q. Zhan from January 2001 through the present.
2. The relationship between Ms. Chen and Star Mark Management, Inc., Great Mark Corporation, Jimmy Zhan, Yi Zhan, Yi Q. Zhan or Y.Q. Zhan from January 2001 through the present.
3. Any loan's made by Ms. Chen to Star Mark Management, Inc., Great Mark Corporation, Great Kingsland, Inc., Jimmy Zhan, Yi Zhan, Yi Q. Zhan or Y.Q. Zhan from January 2001 to the present.
4. The nature of any investments made by Ms. Chen in Star Mark Management, Inc., Great Mark Corporation or Great Kingsland, Inc. between January 2001 to the present.
5. Payments made by Ms. Chen for goods or other assets belonging to Star Mark Management, Inc., Great Mark Corporation or Great Kingsland, Inc., Jimmy Zhan, Yi Zhan, Yi Q. Zhan or Y.Q. Zhan between January 2001 to the present.
6. Money or other assets received by Ms. Chen from Star Mark Management, Inc., Great Mark Corporation or Great Kingsland, Inc., Jimmy Zhan, Yi Zhan, Yi Q. Zhan or Y.Q. Zhan between January 2001 to the present.

## **SCHEDULE B**

### **Document Requests**

1. All documents identifying Ms. Chen's role as an investor, owner, officer, director employee, consultant, representative or in any other capacity for or on behalf of Star Mark Management, Inc., Great Mark Corporation, Jimmy Zhan, Yi Zhan, Yi Q. Zhan or Y.Q. Zhan from January 2001 through the present.
2. All documents from January 2001 through the present sent to or received from Star Mark Management, Inc., Great Mark Corporation, Jimmy Zhan, Yi Zhan, Yi Q. Zhan or Y.Q. Zhan including but not limited to correspondence, invoices, emails any other records.
3. All documents from January 2001 through the present reflecting or relating to any loans made to or received from Star Mark Management, Inc., Great Mark Corporation, Jimmy Zhan, Yi Zhan, Yi Q. Zhan or Y.Q. Zhan including, but not limited to written agreements, correspondences, bank statements, cancelled checks, and any other relevant documents.
4. All documents relating or referring to investments made by Ms. Chen in Star Mark Management, Inc., Great Mark Corporation or Great Kingsland, Inc. between January 2001 to the present.
5. All documents reflecting, relating or referring to payments made by Ms. Chen for goods or other assets belonging to Star Mark Management, Inc., Great Mark Corporation, Great Kingsland, Inc., Jimmy Zhan, Yi Zhan, Yi Q. Zhan or Y.Q. Zhan between January 2001 to the present.
6. All documents reflecting, relating or referring to money or other assets received by Ms. Chen from Star Mark Management, Inc., Great Mark Corporation or Great Kingsland, Inc., Jimmy Zhan, Yi Zhan, Yi Q. Zhan or Y.Q. Zhan between January 2001 to the present.



**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on January 18, 2007, I caused a true and complete copy of the foregoing **NOTICE OF DEPOSITION OF JENNY CHEN** to be served by facsimile and first class mail delivery upon:

Bing Li, Esq.  
Law Offices of Bing LI, LLC  
1350 Broadway, 10<sup>th</sup> Floor  
New York, New York 10018-0947

Attorneys for Defendants

  
\_\_\_\_\_  
Anthony A. Coppola

## **EXHIBIT C**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X Docket#  
KOON CHUN HING KEE SOY : 04-CV-2293 (JFB) (SMG)  
& SAUCE FACTORY, LTD., :  
Plaintiff, :  
- versus - : U.S. Courthouse  
STAR MARK MANAGEMENT, INC., : Brooklyn, New York  
et al., : September 18, 2006  
Defendant :  
-----X

(PARTIALLY SEALED TRANSCRIPT)

TRANSCRIPT OF CIVIL CAUSE FOR STATUS CONFERENCE  
BEFORE THE HONORABLE STEVEN M. GOLD  
UNITED STATES MAGISTRATE JUDGE

A P P E A R A N C E S:

For the Plaintiff: Anthony Copolla, Esq.

For the Defendant: Bing Li, Esq.

Official Transcriber: Rosalie Lombardi  
L.F.

Transcription Service: Transcription Plus II  
823 Whittier Avenue  
New Hyde Park, N.Y. 11040  
(516) 358-7352

Proceedings recorded by electronic sound-recording,  
transcript produced by transcription service

## Proceedings

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1 understanding that that information would be in the Quick  
2 Books computer back-up; cannot locate it.

3 Again, it relates to I wasn't able to find  
4 everything. In the back-ups, I could approach Mr. Li and  
5 he would try to get that information for me. That was  
6 the basis for my request.

7 THE COURT: I understand. Mr. Li?

8 MR. LI: Well, the affidavit submitted, that's  
9 my letter responding to Mr. Copolla's Exhibit 1. The way  
10 to document the change of ownership is to either produce  
11 documents we have or to give him an affidavit that we  
12 don't have. We already gave an affidavit saying that we  
13 do not have any documents to change the ownership.

14 Everything is on credit, your Honor. The partner -- on  
15 credit. The partner supplied some goods to Mr. Zhan and  
16 Mr. Zhan in return let the other side keep some money.  
17 He would collect from other customers.

18 So, it's on a credit basis, like a  
19 clearinghouse. It's not like a normal type of  
20 transactions. There's no records, just we may show him  
21 the purchases -- what the purchases stand by his former  
22 partner.

23 THE COURT: So, they don't have any written  
24 agreement?

25 MR. LI: No, nothing. It's --

Proceedings

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1 THE COURT: Or verbal?

2 MR. LI: We answered this question, your Honor,  
3 no less than ten times. No.

4 THE COURT: Can't you --

5 MR. LI: I wish we could have some to satisfy  
6 Mr. Copolla's quest --

7 THE COURT: Have you provided last known  
8 address information for this Mr. Chen?

9 MR. LI: Never asked me for it. If he asked,  
10 we were willing to do that -- we would be willing to do  
11 that. Last known address --

12 MR. COPOLLA: We would request that  
13 information, your Honor.

14 MR. LI: You will have that.

15 MR. COPOLLA: But again, that information, we  
16 believe if there was some substantial transfer of money  
17 through --

18 THE COURT: Yes.

19 MR. COPOLLA: -- you know, a bank transfer or  
20 something, the bank records would indicate that.  
21 Unfortunately, the time frame in which that event  
22 occurred is in the gap of the documents that are missing.  
23 So, hence our dilemma. So, perhaps the --

24 THE COURT: What are you proposing I do?

25 MR. COPOLLA: There's -- I believe recourse is

Proceedings

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1 MR. COPOLLA: With that exception, I believe  
2 that that's everything.

3 THE COURT: That and certainly anything,  
4 Mr. Li, that your expert relies upon in his report. If  
5 it hasn't been disclosed, we're going to have a problem.

6 MR. LI: Right. Well, your Honor, with respect  
7 to fact discovery in this case, at this moment it's  
8 closed.

9 THE COURT: Closed, other than the items we've  
10 discussed on the record today.

11 MR. COPOLLA: Right.

12 MR. LI: We have --

13 MR. COPOLLA: Additional (inaudible).

14 MR. LI: We really need a closure to this,  
15 otherwise --

16 THE COURT: Closed other than the items we  
17 discussed on the record today.

18 MR. LI: Okay. Thank you, your Honor.

19 MR. COPOLLA: Thank you, your Honor.

20 THE COURT: Good day.

21 MR. COPOLLA: Thank you, your Honor, have a  
22 good day. Have a nice weekend.

23 (Matter concluded)

24 -oOo-

25

**EXHIBIT D**

**Bing Li**

**From:** "COPPOLA, A." <aacoppola@lawabel.com>  
**To:** "Bing Li" <bli@blillc.com>  
**Sent:** Wednesday, January 24, 2007 1:06 PM  
**Subject:** RE: Koon Chun v Star Mark

Mr. Li:

We will not withdraw our subpoena.

The discussion with respect to Ms. Chen directly related to Mr. Zhan's testimony that he had a business partner that he bought out and our attempt to find out more information about how that relationship ended and the nature of the transaction relating thereto. We advised Judge Gold at the September 8, 2006 conference that it was plaintiff's understanding that information concerning this transaction could be found in the Quick Books data. It was not. Defendants at that time admitted to Judge Gold that they did not have any documents about this relationship. You advised Judge Gold that you wished you could satisfy plaintiff's request for this information. Judge Gold then asked if you had provided Ms. Chen's last known address and you stated you had not but subsequently agreed to provide it. After your claim after the conference that you never made such a representation you finally provided Ms. Chen's address nearly 3 months after the conference.

Plaintiff does not have to wait until trial as you suggest to obtain the answers to this issue and I do not believe that was Judge Gold's intent in having you provide this information.

Moreover, as I previously stated and as you are well aware, discovery is not completely closed. At the September 8th conference Judge Gold said that discovery was "[c]losed, other than the items we discussed on the record today." That would include the issue regarding Ms. Chen and our contacting her at the address you provided.

Anthony Coppola

Anthony A. Coppola, Esq.  
ABELMAN, FRAYNE & SCHWAB  
666 Third Avenue, 10th Floor  
New York, New York 10017  
(212) 949-9022 ext. 431  
(212) 949-9190 (facsimile)  
[aacoppola@lawabel.com](mailto:aacoppola@lawabel.com)

[www.lawabel.com](http://www.lawabel.com)

-----  
CONFIDENTIALITY NOTE:

This e-mail and any attachments are confidential and may be protected by

1/24/2007



legal privilege. If you are not the intended recipient, be aware that any disclosure, copying, distribution or use of this e-mail or any attachment is prohibited. If you have received this e-mail in error, please notify us immediately by returning it to the sender and delete this copy from your system. Thank you for your cooperation.

-----Original Message-----

From: Bing Li [mailto:bli@blillc.com]  
Sent: Tuesday, January 23, 2007 7:43 PM  
To: COPPOLA, A.  
Subject: Re: Koon Chun v Star Mark

Dear Mr. Coppola:

Your question at the end of your email either shows you do not know about the difference between trial subpoena and pretrial discovery subpoena OR you simply try to cover up your efforts to reopen pretrial discovery. You sure need Jenny Chen's last known address to serve her with your TRIAL subpoena, but not just a pretrial subpoena without the court's authorization more than four months after close of discovery on 9/8/2006. Therefore, we will move to quash the subpoena forthwith unless same is withdrawn by 1:00 p.m. tomorrow (January 24, 2007). Thank you very much. Bing Li

----- Original Message -----

From: "COPPOLA, A." <aacoppola@lawabel.com>  
To: <bli@blillc.com>  
Sent: Tuesday, January 23, 2007 11:30 AM  
Subject: Re: Koon Chun v Star Mark

Mr. Li:

Judge Gold ordered that discovery was closed EXCEPT for the issues discussed at the conference in which YOU agreed to provide the last known address of Jenny Chen. Thus discovery with respect to contacting Ms. Chen is still open.

At the conference Judge Gold initiated the question "Have you provided last

1/24/2007

known address information for this Mrs. Chen?" P. 33 L7-8.

You in turn offered to provide that information. It has been provided and we are entitled to follow up with Ms. Chan.

What would have been the point of giving me Ms. Chen's last known address if

I was not going to be permitted to contact her?

Anthony Coppola

-----  
Sent from my BlackBerry Wireless Handheld

-----Original Message-----

From: Bing Li <bli@blillc.com>  
To: COPPOLA, A. <aacoppola@lawabel.com>  
Sent: Fri Jan 19 19:53:32 2007  
Subject: Re: Koon Chun v Star Mark

Dear Mr. Coppola:

Thank you for your reply anyway. I will submit an application to the Court over the weekend.

Also, referring to the newly served Jenny Chen deposition subpoena, it is objectionable to the extent fact discovery has closed since 9/8/2006 and a pre-trial deposition of a non-party witness was not authorized by the court.

Recall that the issue that was kept open at the close of the 9/8/2006 regarding Jenny Chen was defendant's providing you with her last known address, but not a pre-trial deposition. The information was produced to on

11/30/2006. Please forward to me the pertinent portion of the transcript showing the court's authorization of the deposition BEFORE we move to quash the subpoena. Thank you very much. Bing Li

1/24/2007

|

## **EXHIBIT E**

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

-----X  
**Koon Chun Hing Kee Soy & Sauce Factory,  
Ltd.,**

**Plaintiff,**

**-against-**

**Star Mark Management, Inc., et al.,**

**Defendants.**

-----X  
**GOLD, S., U.S.M.J.:**

**ORDER**

**04-CV-2293 (JFB)**

There are two discovery applications currently pending before the court. As will become apparent, my rulings are based upon my review of prior proceedings in this action. Although under other circumstances I might be inclined to consider the underlying merits of the parties' positions about the propriety of the discovery demands in dispute, the large number of previous discovery applications and conferences convinces me not to do so, but instead to base my rulings upon prior court orders and the representations of counsel made at prior conferences.

**A. Defendants' Motion to Modify Subpoena**

First, defendants move for an order limiting the scope of a subpoena served by plaintiff seeking production of certain of defendant Zhan's personal banking records. Docket Entries 143-145. The subpoena at issue seeks six categories of documents. The first five, to which no objection has been raised, seek corporate documents, but the sixth demands production of "[a]ll documents from January 2003 through the present including but not limited to documents pertaining to loans and/or mortgages taken by Yi Q. Zhan (a.k.a., Jimmy Zhan)." Decl. of Bing Li in Support of Motion to Modify Subpoena ("Li Decl."), Ex. A.

During a conference held on September 8, 2006, defendant asserted that I had previously

ruled that plaintiff could not take discovery of defendant Zhan's personal banking records. Decl. of Anthony A. Coppola, Ex. 1. At that time, Mr. Li – Mr. Zhan's counsel – stated "Zhan's personal record . . . the Court already ruled not to be disclosed. At one of the conference [sic], the Court specifically said Zhan's personal record not discoverable." *Id.* at 22. Plaintiff's counsel disputed Mr. Li's recollection. *Id.* at 23. The matter was deferred to afford defendants' counsel an opportunity to submit a transcript or other document reflecting the prior ruling he stated he recalled. *Id.*

Apparently, defendants never provided plaintiff's counsel or the court with a transcript or other indication of my prior ruling. Defendants' counsel did, however, state in a letter dated October 17, 2006, that the ruling he was relying upon was made during a conference held on February 28, 2006. Li Decl., Ex. L. Having received no transcript or other official documentation from defendants, plaintiff served the subpoena at issue.

I have reviewed the transcript of the conference held on February 28, 2006. The first part of the conference was addressed to providing plaintiff's counsel with access to defendants' computer records. One of the problems raised by the parties was that the computer contained both business and personal records. During the course of the discussion, plaintiff's counsel represented that, once he had been given access to the computer records, he would review the files obtained "and delete the personal files." Tr. of Feb. 28, 2006 at 5. Later in the conference, in the course of addressing a different discovery dispute, I ruled that "I'm not going to require the personal documents of Mr. Zan [sic] to be produced to show whether or not he got any assets of Star Mark." *Id.* at 25.

In short, it appears that Mr. Li was correct to recall on September 8, 2006 that I had

previously restricted plaintiff's access to defendant Zhan's personal financial records. For this reason, defendants' motion to modify the subpoena to eliminate the sixth category of documents listed therein is granted.

**B. Plaintiff's Letter Application Regarding Jenny Chen and Corporate Tax Returns**

By letter dated November 22, 2006, Docket Entry 151, plaintiff seeks two additional items of discovery. First, plaintiff seeks the last known address of Jenny Chen. According to plaintiff, Chen is a former co-owner of defendant Star Mark and a business associate of defendant Zhan. By letter dated November 28, 2006, counsel for defendants has agreed to provide the information plaintiff seeks. Defendants shall provide the last known address of Jenny Chen by December 20, 2006.

Second, plaintiff seeks authorizations for the tax returns of the corporate defendants for the years 2002 to 2004. As plaintiff correctly points out, defendants agreed to provide these authorizations without objection during a conference held on September 8, 2006. *See* Pl.'s Letter dated Nov. 22, 2006, Ex. F. Although defendants argue in opposition that they agreed to provide authorizations only for the tax returns of defendant Star Mark but not for the other two corporations for which records were sought (defendant Great Mark Corporation and Great Kingsland, Inc., the successor to defendant Star Mark Corporation), *see* Docket Entry 154 at 4, defendants' counsel made no such statement during the conference; to the contrary, the only limitation insisted upon by counsel was that the personal tax returns of the individual defendant, Zhan, would not be produced.

Mr. Li: I would represent that we would not object to production for all corporate return. . . . To the extent we have not, we will produce to you all of the

corporate tax returns.

The Court: And you'll provide authorizations for any that you don't have, so that they can be obtained from the Internal Revenue Service.

Mr. Li: Yes, your Honor, but not the request seeking –

The Court: Not the personal tax returns.

Mr. Li: Personal tax returns.

Pl.'s Letter, Ex. F, at 36. Accordingly, defendants shall produce authorizations for the tax returns of each of the corporate defendants for the years 2002 to 2004 by December 20, 2006.

### **C. Sanctions**

Finally, plaintiff seeks sanctions in connection with both pending discovery motions. Because plaintiff did not prevail on the first motion, and because defendants opposed only one aspect of the relief sought by plaintiff in connection with the second motion, plaintiff's application for sanctions is denied.

**So Ordered.**

\_\_\_\_\_/s/  
**Steven M. Gold**  
**United States Magistrate Judge**

**Brooklyn, New York**  
**December 8, 2006**

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